TRANSCRIPT OF RECORD

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, [redacted] 1926

No. [redacted] 57

EASTERN TRANSPORTATION COMPANY, APPELLANT,

vs.

THE UNITED STATES OF AMERICA

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF VIRGINIA

FILED APRIL 11, 1925

(31,018)

(31,018)

SUPREME COURT OF THE UNITED STATES

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No. 351

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vs.

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INDEX

JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., AUGUST 24, 1925

[fol. 1] [Caption omitted]

IN UNITED STATES DISTRICT COURT, EASTERN DISTRICT OF VIRGINIA

In Admiralty. No. 3203

EASTERN TRANSPORTATION COMPANY, a Corporation, Libellant,

versus

UNITED STATES OF AMERICA and SEABOARD TRANSPORTATION COMPANY, a Corporation, Respondents

LIBEL—Filed July 26, 1921

[fol. 2] To Hon. D. Lawrence Groner, judge of the court aforesaid:

The libel and complaint of the Eastern Transportation Company against the United States of America as owner of the Steamship Snug Harbor proceeded against in pursuance of an Act of Congress approved March 9, 1920, and against the Seaboard Transportation Company, a corporation, in a cause of collision, civil and maritime, alleges and propounds as follows:

First. The libellant is now, and was at all the times hereinafter set forth, a corporation chartered and existing under the laws of the State of Maryland, and the owner of the barge J. H. Winstead, a wooden vessel of 811 gross tons burden, and the bailee of the cargo on said barge.

Second. At all the times hereinafter set forth the United States of America was, and is, a corporation Sovereign, and the owner of the steamship Snug Harbor, a steel vessel of 2588 tons burden, 264 feet in length, 42 feet in beam, and 24 feet in depth.

Third. At all the times hereinafter set forth the Seaboard Transportation Company was, and it still is, a corporation chartered and [fol 3] existing under the laws of the State of Massachusetts, and the owner of the tug Covington and the barge Pottsville.

Fourth. On August 15, 1920, about 9:30 p. m., while the steamship Snug Harbor was employed solely as a merchant vessel and was on a voyage from Baltimore, Md. to Portland, Me., she came into collision with the barge Pottsville in tow of the tug Covington, and as result, was sunk, and then and there became a total loss.

Fifth. The position of the wreck of the Snug Harbor is, and was, about four and one-quarter miles East by North of Montauk Point Light, in a frequented channel way, within the harbor and inland waters.

Sixth. The wreck of the Snug Harbor was not marked with a buoy or beacon by day or a lighted lantern by night, and was not removed, by the United States of America or the Seaboard Transportation Company. Up to the time hereinafter mentioned notice had not been given or published advising mariners navigating the waters in which the Snug Harbor had sunk of the presence of the wreck.

Seventh. On the 14th of September, 1920, about 5:00 p. m., the barge J. H. Winstead then loaded with a full cargo of coal, in tow of the tug Barrallton, on a voyage from Norfolk, Va. to Fall River, Mass., came into contact with the wreck of the Snug Harbor, and as [fol. 4] a result, was sunk, and then and there, with the cargo thereon, became a total loss.

Eighth. The collision between the Snug Harbor and the Pottsville was due to negligence and carelessness upon the part of those in charge of the steamship, the tug and the barge in the following particulars:

As to the Snug Harbor

(1) She was improperly manned and equipped.
(2) Her navigation was in the hands of careless and incompetent persons.
(3) No proper lookout was maintained.
(4) She was proceeding at an excessive rate of speed.
(5) She was not giving proper signals.
(6) She failed to keep out of the way of the Covington.
(7) She failed to heed the signals of the Covington.
(8) She failed to avoid collision with the Pottsville.
(9) She failed to take seasonable measures to prevent the collision or diminish the damages resulting therefrom.

As to the Covington

(1) She was proceeding at an immoderate and excessive rate of speed in a fog.
(2) She failed to stop her engines and navigate with caution until danger of collision was over.
(3) She did not alter her course to avoid collision.
[fol. 5] (4) She failed to maintain a competent lookout, properly stationed, who was attentive to his duties.
(5) She failed to blow fog signals, as required by statute in such case made and provided.
(6) She, the burdened vessel, failed to keep clear of the steamship Snug Harbor, the privileged vessel.
(7) She failed to listen for and hear fog signals blown by the steamship Snug Harbor.
(8) She did not heed the fog signals blown by the steamship Snug Harbor.

(9) She continued upon her course across the bow of the steamship Snug Harbor from port to starboard.

(10) She failed to cast off her tow, or take any other steps, when a collision was imminent, to avoid the same.

(11) After the collision she abandoned the steamship Snug Harbor, and her crew, although repeatedly requested to stand by and render assistance, contrary to the statute in such case made and provided.

(12) She failed to stand by the barge Pottsville, with the crew of the steamship Snug Harbor on board, although repeatedly requested, and though the barge Pottsville was in a damaged condition, contrary to the statute in such case made and provided.

(13) She was in charge of an incompetent master, who was inattentive to his duties, and as to other faults which will be pointed out at the trial.

As to the Pottsville

(1) She was proceeding at an immoderate and excessive rate of speed in a fog.

(2) She failed to maintain on board a competent lookout, who was attentive to his duties.

[fol. 6] (3) She failed to blow fog signals as required by regulation in such case made and provided.

(4) She failed to change her course to avoid collision, when a collision was imminent.

(5) She failed to cast off her hawser, or take any other steps to avoid collision.

(6) She was in charge of an incompetent master, who was inattentive to his duties, and as to other faults which will be pointed out at the trial.

Ninth. When the barge Winstead collided with the wreck of the Snug Harbor and as a result became, with her cargo, a total loss as aforesaid, she was being navigated in a proper and skillful manner, and the presence of the wreck of the Snug Harbor was not apparent to those in charge of the barge, and the coming of said barge into contact with said wreck, and the consequent sinking and loss of said barge, were due to the unlawful presence of said wreck at the point aforesaid.

Tenth. By reason of the premises the respondents are jointly and severally responsible for the presence of the wreck of the steamship Snug Harbor, and because of their failure to mark, buoy or remove the same, for the damages resulting from the loss of the barge J. H. Winstead and her cargo.

Eleventh. When the barge and her cargo were lost as aforesaid the barge was of the value of $90,000, and her cargo of the value of $15,000.

[fol. 7] Twelfth. The Seaboard Transportation Company is a foreign corporation, but has or will have during the pendency of process

herein estate, to-wit Barges Ohio, Kentucky, Kennebec, Idaho, Occidental, Iowa, Indiana, Pottsville, George R. Schofield, and Lancaster, and tugs Richmond and Covington, or some of them, in the Eastern District of Virginia within the jurisdiction of the United States and of this Honorable Court.

Thirteenth. All and singular the premises are true and within the admiralty and maritime jurisdiction of the United States and of this Honorable Court.

Wherefore, the libelant prays that process in due form of law, according to the course and practice of this Honorable Court in causes of Admiralty and maritime jurisdiction, may issue against the Seaboard Transportation Company, and that if it be not found, its property to-wit, the barges Ohio, Kentucky, Kennebec, Idaho, Occidental, Iowa, Indiana, Pottsville, George R. Schofield, and Lancaster, and tugs Richmond and Covington, or some of them, may be attached, and the said Seaboard Transportation Company, and all persons having or pretending to have any right, title or interest in the property attached as aforesaid, may be cited to appear and answer under oath all and singular the matters aforesaid, and that a decree may be entered against the said Seaboard Transportation Company for the damages aforesaid, with interest and costs, and that its prop-
[fol. 8] erty, to-wit the barges Ohio, Kentucky, Kennebec, Idaho, Occidental, Iowa, Indiana, Pottsville, George R. Schofield, and Lancaster, and tugs Richmond and Covington, or some of them, may be condemned and sold to pay the same, and that process in due form of law, according to the course and practice of this Honorable Court in causes of Admiralty and maritime jurisdiction, and in accordance with the Rules and Requirements of the Act of Congress, may issue against the United States of America citing them to appear and answer under oath all and singular the matters aforesaid, and that a judgment and decree may be entered against them for the damages aforesaid, with interest and costs, and that the libelant may have such other, further and general relief as it is entitled to receive.

Eastern Transportation Co., by Baird, White & Lanning, Proctors. Baird, White & Lanning, Kirlin, Woolsey, Campbell, Hickox & Keating, Proctors for the Libelant.

[fol. 9] Sworn to by T. J. Hooper. Jurat omitted in printing.

[fol. 10] IN UNITED STATES DISTRICT COURT

SUGGESTION OF WANT OF JURISDICTION OF UNITED STATES—Filed May 3, 1922

To the Honorable D. Lawrence Groner, Judge of the Court aforesaid:

And now come the United States of America by Paul W. Kear, United States Attorney for the Eastern District of Virginia, appearing herein specially and not otherwise, for that purpose and very

respectfully suggest that this Honorable Court is without jurisdiction of the said proceeding insofar as it involves the United States of America and without jurisdiction of the United States of America herein for the following reasons:

(1) The said alleged cause of action set out in the said libel relates to an alleged failure on the part of the officers and/or agents of the United States to perform a purely governmental function or to alleged negligence of such officers and/or agents in the performance of a purely governmental function; and gives rise to no liability on the part of the United States of America for which they are suable in the United States Court or elsewhere.

(2) The said alleged cause of action relates to an alleged failure to mark the position of a wreck and in nowise concerns a vessel employed as a merchant vessel.

(3) The purpose of the Act of Congress approved March 9th, [fol. 11] 1920, known as the "Suits in Admiralty Act," was to prevent the arrest and detention of vessels owned and or possessed by the United States and then employed as merchant vessels and it was only to prevent such arrest and detention and the consequent interference with the operation of such vessels that the United States consented by the said Act to be sued in respect to such vessels. They have never consented by said act, or otherwise, to be sued in respect to a wreck or any object incapable of being employed as a merchant vessel.

(4) The suit in personam provided for and permitted by the above mentioned "Suits in Admiralty Act" was intended by Congress to be and is only a substitute for a suit in rem against the vessel itself and by the terms of said Act can be brought and maintained only in cases where if such vessel were privately owned a suit in rem could be maintained against her at the time of the commencement of such action and not then unless such vessel " is employed as a merchant vessel" at that time.

(5) Section 15 of the Act of March 3, 1899, making it the duty of the owner of any vessel or craft wrecked and sunk in a navigable channel immediately to mark it with a buoy or beacon by day and a lighted lantern at night, has no application to the United States of America, imposes no duty upon them and creates no liability for which they are suable in this Court or elsewhere.

[fol. 12] Wherefore, they deny the jurisdiction of this Honorable Court and pray that the said libel insofar as it is a libel against the United States of America may be forthwith dismissed.

And they will ever pray.

United States of America, by H. H. Rumble, Special Assistant in Admiralty to the United States Attorney.

[fol. 13] IN UNITED STATES DISTRICT COURT

OPINION—Filed Sept. 30, 1922

Kirlin, Woolsey, Campbell, Hickox & Keating, and Baird, White & Lanning, for libelant, Eastern Transportation Co.

H. H. Rumble, Special Assistant in Admiralty to the United States Attorney, for respondent The United States of America.

Blodgett, Jones, Burnham & Bingham, and Hughes, Vandeventer & Eggleston, for respondent Seaboard Transportation Co.

GROSER, District Judge:

This is a motion to dismiss for lack of jurisdiction.

Libelants claim against The United States as owners of the Steamship "Snug Harbor," and the Seaboard Transportation Company as owner of the Barge "Pottsville" and the Tug "Covington." The "Snug Harbor," a Shipping Board vessel, was sunk about 9:30 P. M. August 15th, 1920, about 4¼ miles east by north from Montauk Point, as the result of a collision with the "Pottsville," in tow of the "Covington." The place of the sinking is alleged to be a frequented channelway within the inland waters of The United States, and the basis of liability is the alleged failure to mark the position of the wreck, or to remove the same, as a result of which two barges belonging to libelant came into contact with the wreck and were sunk, 29 [fol. 14] days after the first collision and sinking.

It will thus be seen that the suit is brought upon the theory that The United States, by virtue of the Suits in Admiralty Act, is brought within the provisions of the Act of March 3rd, 1899, making it the duty of the owner of a vessel sunk in a navigable channel to immediately mark it with a buoy by day and a lighted lantern by night. The applicable parts of the act in question provide as follows:

"That no vessel owned by The United States, * * * shall hereafter, in view of the provision herein made for a libel in personam, be subject to arrest or seizure by judicial process," etc., etc.

"That in cases where if such vessel were privately owned or operated * * * a proceeding in admiralty could be maintained at the time of the commencement of the action herein provided for, a libel in personam may be brought against The United States * * * provided that such vessel is employed as a merchant vessel" * * *

The United States deny that the Suits in Admiralty Act may be so construed as to impose on them the same duty as is imposed by a regulatory statute (Act of March 3rd, 1899) on private owners to mark wrecks, or the same liability for failure to do so. That the liability here asserted is not a liability of the vessel, but a personal liability of The United States to perform a duty imposed by statute, and that in the very nature of things the sovereign cannot be guilty of a violation of its own statute,—certainly not without its consent, and that the provisions of the Suits in Admiralty Act give no consent.

[fol. 15] In England, the law seems to be that the owner of a vessel sunk in a channelway, who has not abandoned the vessel, is liable for failure to mark the wreck if other shipping is thereby damaged. (The Snark, Prob. D. 105, C. A.; The Utopia, A. C., 492 P. C.; The Douglas, 7 Prob. D. 151, C. A.). The question of abandonment would, under such circumstances, seem clearly to be a question of fact.

The doctrine stated above as applicable under the English law, was, perhaps, less well recognized in the American courts, although in a number of cases decided prior to the Act of 1899 the same general principle is announced. (The Plymouth, 225 Fed. 483; People's Coal Company, 181, Fed. 609-188 Fed. 893). There is, however, now no contention between the parties, nor indeed is there ground for any, but that under the provisions of the Act of March 3rd, 1899 (Sec. 9920 U. S. Comp. Stats. 1916) the owner of a vessel sunk in a navigable channel is required, immediately, to mark the wreck with a buoy during the day and a light at night, and to maintain such marks until the sunken craft is removed or abandoned, and to account for any damages sustained by other vessels by reason of his failure so to do. (The Fahy, 153 Fed. 866; The Macey, 170 Fed. 930; People's Coal Co., 181 Fed. 609-188 Fed. 893). Since, therefore, admittedly, this duty is imposed upon the owners of vessels privately owned or operated, it would logically seem to follow, in the absence of anything to the contrary, that in Section 2 of the [fol. 16] Act of March 9th, 1920, The United States had consented to be held to accountability equally and to the same extent. The ordinary and usual interpretation of the language of the section would so imply, for it is neither more nor less than the plain statement that in all cases in which suit in admiralty may be brought against the vessel privately owned, a libel in personam may be brought against The United States where The United States are employing such vessel in the merchant service. But counsel for The United States insist that this is not the case, and say that the Act of March 3rd, 1899, is a penal statute, and was never intended to apply to the government itself; that The United States cannot commit a legal wrong, nor be answerable in one of their courts for a violation of a regulatory statute. Undoubtedly this is true, but it does not, it seems to me, necessarily follow that because The United States can do no legal wrong, they may not consent to be answerable for a tort committed in their behalf where such tortuous act results in injury to others. On the contrary, Congress has a number of times recognized such obligation by the passage of special acts permitting suits against it for injuries occurring as a result of negligence on the part of naval vessels. And if this be true; then the only question in the case at bar is: Has such consent been given? Undoubtedly, the provisions of the Suits in Admiralty Act permit suits against the government for tort as well as for breach of contract.

[fol. 17] The negligence of the master or crew of a vessel, in any one of a dozen ways, might create liability for which no immunity could be claimed; and the same is true for the negligent violation of Federal statutes. It would not now be contended for a moment

that a Shipping Board vessel, causing injury to another through failure to have, as required by law, a licensed pilot aboard, would be entitled to immunity because of government ownership. Again, by way of illustration, all vessels are required, by statute, to be equipped with, and have burning at night, certain kinds of lights, located at certain parts of the vessel. It would not seem to be a reasonable proposition for a Shipping Board vessel not thus equipped, and thereby causing damage to another, to escape liability because of government ownership. And if this be true, it would be difficult to distinguish in principle between such a case and that at bar. So it would seem that Congress, in the passage of the Act of March 9th, 1920, intended to waive its claim of immunity, and place itself upon a parity with other ship owners engaged in similar trade and traffic; to take upon itself the same obligation that by law it imposes upon others in like business. If it had not so intended, the addition of a few words to paragraph 2 of the quoted section would have made that determination manifest and beyond question. A reservation of immunity in suits sounding in tort is contained in the Tucker Act, and in the Court of Claims Act. It is absent in the Suits in Admiralty Act; and it would, it seems to me, be to assume the un-[fol. 18] thinkable to say that the draftman of the latter act did not have in mind the different regulatory statutes then in effect, or that Congress did not intend to make the obligation to observe these statutes as much the duty of a government owned vessel, engaged in private enterprise, as of a privately owned vessel, likewise so engaged. Not only, therefore, does the express language of the act, but equally, the failure to limit its terms, lead to the conclusion of an abandonment of immunity, under the circumstances obtaining in the instant case.

The further ground of the motion to dismiss is, that since the libel alleges that the "Snug Harbor" was a total loss, and since, therefore, no suit in rem could have been maintained against the vessel, a suit in personam will not lie against The United States, under the Act of March 9th, 1920. Without now passing upon the question of whether the act in question merely substitutes an action in personam for an action in rem, I am of opinion that the motion to dismiss on this ground should be denied, and that this question should be determined after the facts are elicited in the trial of the case.

And since there is no presumption of abandonment, and as that question may be determined only upon a hearing and trial, the motion to dismiss on behalf of The United States ought to be, and is, [fol. 19] denied. The motion made on behalf of the Seaboard Transportation Company is, likewise, denied. The defenses applicable to that respondent can be better determined after a full hearing.

Motion to dismiss denied.

[fol. 20] IN UNITED STATES DISTRICT COURT

JUDGMENT AND ORDER DISMISSING LIBEL AS TO UNITED STATES OF AMERICA—Filed Jan. 30, 1925

This cause having been re-heard and re-considered on the suggestion of want of jurisdiction heretofore filed herein by the United States of America; and it appearing from the libel filed herein that prior to the time of the injury complained of in said libel the steamship Snug Harbor had been sunk and at the time of such sinking became and was a total loss; and the Court being of the opinion that on the facts alleged in the libel it is without jurisdiction of this case, doth sustain the suggestion of want of jurisdiction filed by the United States and accordingly doth—

Adjudge, order and decree that the said libel be, and it is hereby, dismissed as to the United States of America, with costs.

D. Lawrence Groner, United States District Judge.

Norfolk, Virginia.

[fol. 21] IN UNITED STATES DISTRICT COURT

CERTIFICATE OF THE DISTRICT JUDGE THAT THE DECISION REACHED BY HIM IN THIS CAUSE WAS BASED SOLELY UPON THE QUESTION OF JURISDICTION—Filed March 20, 1925

I, D. Lawrence Groner, Judge of the District Court of the United States for the Eastern District of Virginia at Norfolk, do certify that:

(1) The libel herein was duly filed and service duly had upon the United States of America in pursuance of the Act of Congress approved March 9, 1920, known as the "Suits in Admiralty Act."

(2) The United States appeared specially and filed a suggestion of want of jurisdiction. It raised no question as to venue in this cause, but waived the same, its contention being that it was not suable in any court on the cause of action set up in the libel, and that this Court had not jurisdiction regardless of the question of venue.

(3) This cause came on to be heard upon the suggestion of the United States of America that this Court was without jurisdiction to hear and determine the controversy for the reasons in said suggestion set forth.

(4) The sole issue before the Court was as to its jurisdiction as a United States District Court sitting in admiralty, and whether it had jurisdiction over the United States in said cause, and it being [fol. 22] of opinion that it was without jurisdiction because it was alleged in the libel that before the time of the injury complained of in the said libel the S. S. Snug Harbor had been sunk and had

then and there become and was a total loss, the suggestion of the United States was sustained and the proceedings dismissed as to the United States. The sole question decided by the court was as to its jurisdiction.

(5) The documents mentioned in the stipulation of counsel filed herein are copies of those upon which the undersigned based his aforesaid opinion and decision in this cause. This certificate is made and signed in conformity with Section 238 of the act entitled "An Act to Modify, Revise and Amend the Laws Relating to the Judiciary," approved March 3, 1911. Section 238 as amended.

D. Lawrence Groner, U. S. District Judge.

Norfolk, Virginia.

[fol. 23] IN UNITED STATES DISTRICT COURT

PETITION FOR AND ORDER ALLOWING APPEAL—Filed March 20, 1925

The Eastern Transportation Company feeling itself aggrieved by a final decree entered herein on January 30, 1925, whereby its libel was dismissed upon the ground that the District Court of the United States for the Eastern District of Virginia at Norfolk was without jurisdiction of the controversy in said libel set forth, and having filed with the Clerk of said Court an assignment of errors, doth hereby appeal from the said final decree to the Supreme Court of the United States, for the reasons specified in its assignment of errors, and it prays that this, its appeal, may be allowed and that the question of the jurisdiction of the District Court in said cause and of itse right to award the relief in the libel prayed for may be certified to the Supreme Court of the United States, and that a transcript of the record and proceedings upon which said final decree is based, duly authenticated, may be sent to the said Supreme Court of the United States.

Baird, White & Lanning, Proctors for the Libelant.

Norfolk, Virginia.

Appeal allowed as prayed for.

D. Lawrence Groner, United States District Judge.

[fol. 24] IN UNITED STATES DISTRICT COURT

ASSIGNMENTS OF ERROR—Filed March 20, 1925

Now comes the Eastern Transportation Company by its proctors of record, and having appealed from a final decree of the District Court of the United States for the Eastern District of Virginia at Norfolk entered in the above entitled cause on January 30, 1925,

holding that said Court was without jurisdiction under the provisions of the Act of Congress approved March 9, 1920, known as the "Suits in Admiralty Act," it assigns the following as the errors upon which it intends to rely on said appeal.

The Court erred:

I

In holding it was without jurisdiction of the cause of action in the libel set forth.

II

In sustaining the suggestion of the United States.

III

In failing to over-rule the suggestion of the United States.

IV

In dismissing the libel.

Baird, White & Lanning, Proctors for the Libelant.

Norfolk, Virginia.

[fols 25 & 26] CITATION—In usual form, showing service on Paul W. Kear et al.; omitted in printing

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[fol. 27] IN UNITED STATES DISTRICT COURT

STIPULATION RE TRANSCRIPT OF RECORD—Filed March 20, 1925

It is hereby stipulated and agreed that the Clerk of this Court shall make up a transcript of the record in the above entitled cause and transmit the same to the Clerk of the Supreme Court of the United States, to be printed under the supervision of the Clerk of that Court in accordance with Rule 10 of said Court.

Baird, White & Lanning, Proctors for Appellant. H. H. Rumble, Special Assistant in Admiralty to the United States Attorney.

[fol. 28] IN UNITED STATES DISTRICT COURT

STIPULATION RE TRANSCRIPT OF RECORD—Filed March 20, 1925

It is stipulated and agreed between counsel for the libelant and the United States of America that:

I

The record herein on the appeal taken by the Eastern Transportation Company from the decree sustaining the exceptions of the United States of America and dismissing the above entitled cause shall consist of:

(a) The libel.

(b) The suggestion of the United States that the Court was without jurisdiction.

(c) The opinion of the Court.

(d) The final order entered January 30, 1925.

(e) The certificate of Hon. D. Lawrence Groner, Judge of the U. S. District Court for the Eastern District of Virginia at Norfolk.

(f) The petition of the Eastern Transportation Company for an appeal.

(g) The Eastern Transportation Company's assignment of errors, and the order allowing appeal.

(h) The citation on appeal.

(i) This stipulation.

II

The aforementioned documents, papers and pleadings constituting the record herein on appeal are true transcripts or copies of the [fol. 29] whole record of the District Court of the United States for the Eastern District of Virginia at Norfolk in the above entitled cause, as agreed upon between the parties, and that none of the pleadings or orders affecting the Seaboard Transportation Company shall be made a part of the record upon the appeal, all proceedings as to said Company having been dismissed for reasons appearing to the Court and to counsel.

Baird, White & Lanning, Proctors for the Libelant. H. H. Rumble, Special Assistant in Admiralty to the United States Attorney, Proctor for the United States of America. Paul W. Kear, U. S. Attorney.

[fol. 30] IN UNITED STATES DISTRICT COURT

CLERK'S CERTIFICATE

UNITED STATES OF AMERICA,
Eastern District of Virginia, ss:

I, Joseph P. Brady, Clerk of the District Court of the United States for the Eastern District of Virginia, do hereby certify that the fore-

going is a full and true transcript of the record of the proceedings and judgment of the said Court, as stipulated by counsel, in the therein entitled cause.

In testimony whereof, I hereunto set my hand and affix the seal of said Court, at Norfolk, in said District, this 3rd day of April, 1925.

Joseph P. Brady, Clerk U. S. District Court, by Paul R. Flanagan, Deputy Clerk. (Seal of U. S. District Court, Eastern Dist. of Virginia.)

Indorsed on cover: File No. 31,018. E. Virginia D. C. U. S. Term No. 351. Eastern Transportation Company, appellant, vs. The United States of America. Filed April 11th, 1925. File No. 31,018.